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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 364

WILLIAM BUNN,

Petitioner

VERSUS

CITY OF ATLANTA,

Respondent

MOTION FOR RE-HEARING
ON
PETITION FOR CERTIORARI
TO THE
COURT OF APPEALS OF GEORGIA

HAL LINDSAY
STEPHENS MITCHELL
A. T. WALDEN
Attorneys for William Bunn,
Movant.

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MOTION FOR RE-HEARING

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Now comes William Bunn, plaintiff in certiorari, and moves for a re-hearing on the application for certiorari in the above case on the following grounds:

The order denying the petition for writ of certiorari reads:

> "The petition for writ of certiorari is denied on the ground that it does not appear from the record that application therefor was made within the time provided by law. Section 8(a), Act of February 13, 1925 (43 Stat. 936, 940), 28 U. S. C., Section 350."

Your petitioner contends that the section cited in the order denying the application has no bearing.

Petitioner contends that the question for determination is "Has this certiorari been filed too late?".

In answer to the question "Has this certiorari been filed too late?", we must examine the Georgia law.

(1) This certiorari is from the decision of the Georgia Court of Appeals.

(2) The decision from which the actual appeal was taken was rendered on the 20th day of March, 1942.

(3) But, under the rules regulating certiorari this decision could not be the subject of certiorari to this Court.

(4) Under these rules a certiorari must be taken to the Supreme Court of Georgia.

(5) This certiorari was taken, and the certiorari was overruled May 19th, 1942.

(6) The remittitur from the Supreme Court of Georgia, denying the application for writ of certiorari to the judgment of the Court of Appeals of Georgia, was filed in the office of the Clerk of the Court of Appeals on June 1st, 1942.

(7) Is the present action a certiorari on the certiorari which was overruled May 19th, 1942? Obviously not, for it is directed to the *Court of Appeals* of Georgia and seeks to review the decision rendered on the 20th day of March, 1942.

Up until that time no certiorari was possible for

(a) No certiorari can be taken from the Court of Appeals of Georgia until a certiorari has been denied by the Supreme Court of Georgia.

(b) The writ of certiorari in this case is not directed to the Supreme Court of Georgia, but to the Court of Appeals, and until decision of the Supreme Court of Georgia is made the judgment of the Court of Appeals of Georgia there is nothing on which a certiorari can be based.

And this is particularly true in the present case, where the decision of the Supreme Court of Georgia held that it had no original appellate jurisdiction over this case, but that jurisdiction was in the Court of Appeals of Georgia. But due to technical rule set forth above, it could not be reviewed in this court until the Supreme Court of Georgia had overruled a certiorari.

Now, at what date did the decision of the Supreme Court of Georgia become the judgment of the Court of Appeals of Georgia?

It became the judgment of the Court of Appeals on the day that the remittitur from the Supreme Court to the Court of Appeals was entered on the docket of the Court of Appeals, said date being June 1st, 1942. (Page 21 of the Transcript of Record.)

When the remittitur was entered there was a judgment from which plaintiff in certiorari could

bring certiorari to the Supreme Court of the United States.

The law in Georgia as to remittitur is stated in *Parker vs. Gortatowsky*, 129 Ga. 626, as follows:

> "The suit . . . was not at an end before the remittitur was filed, at least. Perhaps entering judgment on it may not have been the duty of the losing party. The announcing of the decision of the Supreme Court did not close the record. So that, before it was ended, the effort to recover the property by dispossessory proceeding was premature."

And in the case of *Hubbard vs. McCrea*, 103 Ga. 680, the Court held:

> "When a case has been brought to this court from a final judgment of a trial court, the latter has no jurisdiction to proceed with a new trial of the case until after the remittitur from this court has been entered upon the minutes of the lower court and made the judgment thereof."

For these reasons plaintiff in certiorari contends that until the decision of the Supreme Court of Georgia was by remittitur made the judgment of the Court of Appeals of Georgia, on June 1, 1942, there was nothing from which he could certiorari, and that he did bring his certiorari within ninety (90) days from the time when the judgment of the Supreme Court of Georgia was entered by remittitur on the docket of the Court of Appeals of Georgia.

WHEREFORE, Plaintiff in Certiorari submits that the order denying the writ of certiorari should be reconsidered and rescinded and said petition for certiorari considered on its merits.

Respectfully submitted,

Hal Lindsay

Stephens Mitchell

A. T. Walden

ATTORNEYS FOR WILLIAM BUNN,

APPLICANT FOR WRIT OF CERTIORARI.

GEORGIA, FULTON COUNTY.

I, Hal Lindsay, do hereby certify that I have written and filed the foregoing application for ~~certiorari~~ certiorari, in the case of Bunn versus The City of Atlanta in good faith, and not for delay.

Hal Lindsay

Sworn to and subscribed before me

this 11th day of November, 1942.

R. E. Pruden

Notary Public, Ga. State at Large.
Atlanta, Ga.
My commission expires Aug. 7, 1943.